

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

PHILLIP HUDNALL, TODD ESH,
BIRDDOG BUSINESS GROUP, LLC, and
BIRDDOG OIL EQUIPMENT, LLC,

Defendants,

DUC “DOUG” NGUYEN,
BRIAN HUDNALL, DONDON, LLC,
KANSAS OIL RESERVES, LLC,
KANSAS OIL RESERVES 2, LLC, and
PHARYN RESOURCES, LLC,

Relief Defendants.

Civil Action No. 20-cv-327

**PLAINTIFF SEC’S MOTION AND SUGGESTION FOR ENTRY OF PARTIAL
JUDGMENT BY CONSENT AS TO DEFENDANT TODD ESH**

Plaintiff, the United States Securities and Exchange Commission (“SEC”) respectfully moves the Court to enter the proposed Partial Judgment (“Proposed Judgment”) as to Defendant Todd Esh based on Defendant Esh’s signed consent. A copy of Defendant Esh’s consent to entry of the Proposed Judgment is attached as Exhibit A and a copy of the Proposed Judgment is attached as Exhibit B. In support of this Motion, the SEC states as follows:

1. The SEC filed its Complaint against Phillip Hudnall, Todd Esh, BirdDog Business Group, LLC, and Birddog Oil Equipment, LLC, on April 23, 2020. (Dkt# 1.) The Complaint alleges that Phillip Hudnall, Todd Esh, and their co-defendants committed

securities fraud in violation of Section 17(a) of the Securities Act of 1933, [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 CFR § 240.10b-5].

2. The SEC and Esh, in partial settlement of the SEC's claims, have agreed to the entry of the Proposed Judgment. Attached as Exhibit A is a Consent signed by Esh, in which he agrees to the relief sought in the Proposed Judgment.

3. The Proposed Judgment eliminates the need to litigate the merits of Esh's liability and permanently enjoins Esh from violations of each of the provisions of the federal securities law at issue in the Complaint.

4. The Proposed Judgment further provides that the monetary relief sought by the SEC – in the form of disgorgement and civil penalties – shall be determined by the Court at a later date. If the Parties are unable to resolve the issue of monetary relief, the SEC anticipates moving for remedies as to Defendant Esh after the SEC's claims against Phil Hudnall and his co-Defendants are resolved. For the purpose of that determination, the parties agree that the Court would accept the allegations in the Complaint as true. In SEC enforcement actions, Courts have routinely entered judgment based on this type of bifurcated settlement and have adopted the procedures described in the Consent for the relief phase of proceedings. *See, e.g., SEC v. Zenergy Int'l, Inc.*, 2016 WL 5080423 (N.D. Ill. Sept. 20, 2016); *SEC v. Merendon Mining Inc.*, 2012 WL 12916361, at *2 (W.D. Wash. Oct. 30, 2012); *SEC v. Integrity Fin. AZ, LLC*, 2012 WL 176228, at *2 (N.D. Ohio Jan. 20, 2012); *SEC v. Resources Planning Group, Inc.*, Case No. 12-cv-9509, Docket No. 51 (N.D. Ill. Sept. 29, 2014).

5. In his Consent, Esh agrees that the SEC “may present the [Proposed] Judgment to the Court for signature and entry without further notice.” (Ex. A, Consent, ¶ 17).

6. Under Rule 54(b) of the Federal Rules of Civil Procedure, there is no just reason to delay entry of the Proposed Judgment as to Defendant Esh. Entry of the Proposed Judgment will resolve the issue of liability on all claims against Defendant Esh in this action and will reserve the issue of monetary relief until a later date. There is little risk of piecemeal appeals as Defendant Esh has waived his right to appeal from this judgment, as reflected in Exhibit A. (Ex. A, Consent ¶ 6.)

18. Entry of the Proposed Judgment will conserve judicial resources, streamline the issues in this litigation, and save the SEC and Esh the time and expense of continued litigation on the issue of liability.

WHEREFORE, for the reasons cited above, the SEC respectfully requests that the Court grant this motion and enter the Proposed Judgment.

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

Dated: May 18, 2020

Respectfully Submitted,

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION**

/s/ *Timothy S. Leiman*

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2020, I caused a copy of **PLAINTIFF SEC'S MOTION AND SUGGESTION FOR ENTRY OF PARTIAL JUDGMENT BY CONSENT AS TO DEFENDANT TODD ESH** to be served on the following by email (by agreement of counsel):

Todd Esh
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/s/ Timothy S. Leiman

Timothy S. Leiman